



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,581	08/03/2001	Alfred D. Commins	SST/1148	9692
498 7590 12/09/2009 JAMES R. CYPHER 405 14TH STREET SUITE 1607 OAKLAND, CA 94612				
EXAMINER				
YIP, WINNIE S				
ART UNIT		PAPER NUMBER		
3636				
MAIL DATE		DELIVERY MODE		
12/09/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/922,581

**Applicant(s)**

COMMINS ET AL.

**Examiner**

Winnie Yip

**Art Unit**

3636

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 35-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-39 and 46-49 is/are allowed.
- 6) ☒ Claim(s) 1, 35, 40, 42, 44, 45, 50 and 51 is/are rejected.
- 7) ☒ Claim(s) 41, 43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission, the information disclosure statement (IDS), filed on October 13, 2009, has been considered by the examiner.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Specification***

1. The disclosure is objected to because of the following informalities:

The specification, under the section of "Brief Description Of The Drawings", fails to define Figure 16.

Appropriate correction is required.

### ***Allowable Subject Matter***

2. The indicated allowability of claims 1, 35, 40-45 and 50-51 is withdrawn in view of the discovered references Hagedorn (US Patent No. 2,666,238) and Delight (US Patent No. 4,321,776) and further consideration. Rejections based on the newly cited references and reconsideration follows.

***Claim Rejections - 35 USC § 102***

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by O'Malley (US Patent No. 2,191,804).

O'Malley discloses a wall (Fig. 5) designed to resist lateral forces imposed on a building incorporating said wall, said wall comprising: **a.** an underlying structural component (12) for supporting said wall, and a bottom plate (11) resting on and connected to the underlying structure component; **b.** a plurality of vertically-disposed studs (18) resting on said bottom plate; **c.** a top plate (14) resting on said vertically-disposed studs; **d.** at least one shear-resisting assembly (13) including: a planar shear-resisting element (22) being a sheet element (22) inherently having a proximal face and a distal face, a top edge, a bottom edge and first and second side edges; a top strut (19) connected to the top edge of the sheet element, a bottom strut (19) connected the bottom edge of the sheet element, a first chord (18) and a second chord (18) connected the first and second side edges the sheet element respectively by threaded fasteners (27), and a plurality of fasteners (28, 26) each having a threaded shank portion being inserted through the top strut (19) of the shear-resisting assembly and into the top plate (14) to connected the shear-resisting assembly (13) to the top plate, wherein the bottom plate (19) of the shear-resisting assembly rests directly on the underlying structure component (11) and being connected to the underlying structural component (11) by ground anchor bolts (26).

4. Claim 44 is rejected under 35 U.S.C. 102(b) as being anticipated by Mueller (US Patent No. 5,706,626).

Mueller discloses a wall (Fig. 5) designed to resist lateral forces imposed on a building incorporating said wall, said wall comprising: **a.** an underlying structural component (170) for supporting said wall, and a bottom plate (161) resting on and connected to the underlying structure component; **b.** a plurality of vertically-disposed studs (160a, 160b) resting on said bottom plate; **c.** a top plate (162) resting on said vertically-disposed studs; **d.** a shear-resisting assembly (100) including: a planar shear-resisting element (110) having a proximal face and a distal face, a top edge, a bottom edge and first and second side edges, a top strut (104), a bottom strut (106), a first chord (102a), (5) and a second chord (102b) each being connected along the edges of the planar shear-resisting element respectively by threaded fasteners (132), wherein the shear-resisting assembly (100) rests directly on the underlying structure component, and the first and second chords rest directly on the underlying structure component and being connected to the underlying structure by hold down brackets (130a, 13b) via ground anchor bolts (166a, 166b) and nuts (135), and also connected to the first and second chords by fasteners (132) respectively, wherein the threaded fasteners (132) that connect the holdowns (130a, 130b) to the chords (105a, 105b), respectively, are bolts (320) each inherently has a threaded shank portion extends through side-by-side of the chord and the bracket, and tightened via nuts, wherein the shear-resisting assembly (100) rests directly on the underlying structure component, and the shear-resisting assembly disposed between and connected to the top plate via a mounting plate (164) and to the underlying structure component via the anchor bolts.

***Claim Rejections - 35 USC § 103***

5. Claim 35 is rejected under 35 U.S.C. 103(a) as being obvious over O'Malley (U.S. Patent No.2,191,804) as applied to claim 1 above, and further in view of Delight (US Patent No. 4,321,776) .

The claim is considered to meet by O'Malley explained and applied above rejection except that O'Malley does not explicitly define a wall further comprising anchor bolts being anchored to the underlying structural component, and holdowns connected to the first and second chords and received and connected to the anchor bolts for mounting the wall to the underlying structural component. Delight teaches a wall (see Fig. 6) comprising a bottom plate (26) connected on a underlying structural component (27), a plurality of vertical studs or chords rested on the bottom plate, anchor bolts being anchored to the underlying structural component and extending upward through the bottom plate, and a plurality of corresponding holdowns mounted to the studs or chords by fasteners and receiving and connecting the anchor bolts respectively via nuts for holdown the studs or chords on the underlying structural component as claimed. Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the shear-resisting assembly of the wall of O'Malley anchor bolts being anchored to the underlying structural component and having holdowns mounted to the first and second chords to receive and connect the anchor bolts respectively as taught by Delight instead of threaded fasteners for strongly securing the wall on the underlying structural component.

6. Claims 44-45 are rejected under 35 U.S.C. 103(a) as being obvious over O'Malley (U.S. Patent No.2, 191,804) in view of Delight (US Patent No. 4,321,776).

The claims are considered to meet by O'Malley as modified by Delight as explained and applied above rejection. Delight further teaches the holdowns each being connected to the studs/chords by fasteners (see Figs. 1 and 6) which is inserted only a suitable distance into the studs/chord without passing all the way through the studs/chord. Although Delight does not explicitly define the fasteners including a threaded shank portions as claimed, O'Malley teaches a fastener for mounting studs/chord is generally being a threaded fastener having a threaded shank portion for more tightly mounting the studs/chords. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the shear-resisting assembly of the wall of O'Malley having holdowns being secured to the chords by fasteners as taught by Delight and having the fasteners being threaded fasteners that having threaded shank portion for easily inserting into and strongly securing the holdown to the stud/chord as an obvious matter of design choice of fasteners for accommodating the materials of the studs/chords for various applications.

7. Claim 45 is rejected under 35 U.S.C. 103(a) as being obvious over Mueller (U.S. Patent No. 5,706,626) as applied to claim 44 above.

The claim is considered to meet by Mueller explained and applied above rejections except that Mueller does not explicitly define the threaded fasteners that connect the holdowns to the chords being inserted only a selected distanced into the respective chord without passing all the way through the chords. However, Mueller teaches the first and second chords (102a, 10b)

each having upper and bottom portions being connected to the top strut and the bottom struts. And, the upper portion chords being connected the top strut by threaded fasteners (124) that are inserted only a selected distance into the respective chord without passing all the way through the chords as claimed. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the shear-resisting assembly of the wall of Mueller having the bottom portion of each chord being connected to the holdown bracket by threaded fasteners instead of threaded bolts such as applied on upper portion of the chords to take the advantage of the threaded fasteners can be inserted partially into the chord without passing all the way through the sides of the chords as the claimed as an obvious matter of design fasteners mechanism for more quickly constructional assembly.

8. Claim 40 and 42 are rejected under 35 U.S.C. 103(a) as being obvious over Mueller (U.S. Patent No. 5,706,626) in view of Hagedorn (US Patent No. 2,666,238).

The claims are considered to meet by Mueller explained and applied above rejections except that Mueller does not explicitly define the wall including standoff plates, and the first and second chords of the shear-resisting assembly being rested on the standoff plate as claimed. However, Hagedorn teaches, as old and known in the construction art, a wall comprising a horizontal underlying structure component (32), a plurality of vertical chords (31) mounted on the a standoff plate (10) placed on the underlying structure component for providing rigidly support to the chord. It would have been obvious to one ordinary skill in the art at the invention was made to modify the wall of Mueller having standoff plates mounted on the underlying structural component, and the first and second chords of the shear-resisting assembly



each being rested on a standoff plate to rest the assembly on the underlying structural component as taught by Hagedorn for providing a rigid support to the chords and to the shear-resisting assembly.

9. Claims 50-51 are rejected under 35 U.S.C. 103(a) as being obvious over Mueller (U.S. Patent No. 5,706,626) in view of Utzman (US Patent No. 5,870,870).

The claims are considered to meet by Mueller explained and applied above rejections except that Mueller does not expressly disclose that the shear-resisting element of the shear-resisting assembly of the wall comprising a plurality of adjoining structural panels. Utzman teaches a shear resisting assembly comprising a top strut, a bottom strut and a plurality of chords connected to the top and bottom struts to form a wooden frame, at least two adjoining structural panels mounted on wooden frame by fasteners (1) to form a shear resisting element in disposed on a single plane as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a single large panel (a large part) of Mueller's invention by substitute of a plurality of panels (smaller piece of parts) mounted together in a single plane on the struts and chords as taught by Utzman for more easily mounting a large wall assembly and save more material, since it has been held to be within the general skill of a worker in the art to make a unitary into plural parts **and vice versa** as a matter of obvious engineering choice. In re Larson, 144 USPQ 347 (CCPA 1965); In re Lockart, 90 USPQ 214 (CCPA 1951).

***Allowable Subject Matter***

10. Claims 36-39 and 46-49 are allowed.

11. Claims 41 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Citations*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Horowitz '288 teaches a fabricated wall comprising wooden members as claimed invention. Wolfson '384 teaches a chord being mounted on a standoff plate as to for supporting and holdown the chord to an underlying structural component as similar to the claimed invention.

#### *Inquiry Contacts*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Winnie Yip/  
Primary Examiner  
Art Unit 3636

wy  
December 4, 2009